



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII, MONTANA OFFICE
FEDERAL BUILDING, 301 S. PARK, DRAWER 10096
HELENA, MONTANA 59626-0096

ADMINISTRATIVE RECORD

Ref: 8MO

GENERAL NOTICE LETTER AND INFORMATION REQUEST
URGENT LEGAL MATTER - - PROMPT REPLY NECESSARY
CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 4, 1989

Mr. Arthur Zaegel
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

RE: General Notice Letter and Information Request Concerning
Silver Bow Creek/Butte Area Superfund Site
Silver Bow County, Montana

Dear Mr. Zaegel:

NOTICE OF POTENTIAL LIABILITY

This letter notifies the Burlington Northern Railroad Company of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9607(a), as amended, that you may incur or may have incurred with respect to the above referenced site. This letter also notifies you of potential response activities at the site, which you may be asked to perform or finance at a later date. In addition, this letter includes a request for information pursuant to Section 104(e) of CERCLA 42 U.S.C. Section 9604(e).

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Silver Bow Creek/Butte Area Superfund site. EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the site. Unless EPA reaches an agreement under which a potentially liable party or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA 42 U.S.C. Section 9604, and/or require the conduct of the Remedial Investigation/Feasibility Study (RI/FS) through the issuance of a unilateral administrative order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), Section 7003 of the Resource

4010503
100020

Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6973, as amended, and other laws, potentially liable parties may be obligated to implement response actions deemed necessary by EPA to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government on responding to any release or threatened release at the site. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design/Remedial Action (RD/RA), and other investigation, planning, response, and enforcement activities.

EPA has determined that release of hazardous substances (as defined by Section 101(14) of CERCLA) has occurred or may be occurring at properties owned by the companies that you represent and that there is a substantial threat of further releases of hazardous substances (as defined by Section 101(14) of CERCLA) from these properties. At the present time, arsenic, cadmium, lead, copper and zinc from these properties are contaminating and/or threatening to contaminate soils, surface water, groundwater, and ambient air in and around the Silver Bow Creek drainage, including Butte and Walkerville, Montana, downstream reaches of Silver Bow Creek through its confluence with Warm Springs Creek, and portions of the Clark Fork River. Residents of Butte, Montana, and environs may be exposed to elevated concentrations of hazardous substances in soils and solid wastes and to contaminated surface and groundwater. These elevated concentrations may present an imminent and substantial endangerment to health, welfare, and the environment.

SITE RESPONSE ACTIVITIES

At present, EPA is planning to conduct the following activities at the site:

1. Remedial Investigations (RI) to identify the local characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the site.
2. Feasibility Studies (FS) to evaluate alternative remedial actions to remove or contain hazardous substances, pollutants, and contaminants at the site.

EPA, in consultation with the State of Montana, has divided the Butte Area of the Silver Bow Creek/Butte Area Superfund site into four operable units for purposes of conducting RI/FS's. One or more separate RI/FS's shall be conducted for each of these operable units. The four operable units are as follows:

1. Butte Priority Soils Operable Unit
Phase 1 Health
Phase 2 General

This operable unit consists of former and active mining, milling, smelting, and related facilities and associated waste rock, tailings mill wastes, and contaminated soils in populated areas of Butte and Walkerville, Montana, outside the Silver Bow Creek 100 year floodplain. The operable unit is broken into two phases for remedial investigation purposes; phase 1 (health) and phase 2 (general). Phase 1 consists of evaluation of 38 residential areas and mining waste deposits which are in close proximity to these residential areas. Phase 2 consists of evaluation of areas within or in close proximity to the cities of Butte and Walkerville, including the previously mentioned 38 residential areas, which are impacted by mining and milling related wastes. This area generally consists of the area from the Missoula Gulch drainage eastward to the Berkeley Pit and south to the Silver Bow Creek floodplain, and the Clark Tailings/Timber Butte/Grove Gulch area. Phase 2 emphasizes the environmental impact of mining wastes on this area but will also address present and future health impacts and implications of future land uses including residential development.

2. Butte Mine Flooding Operable Unit

This operable unit consists of the flooding Berkeley Pit (a former open pit copper/molybdenum mine located in northeastern Butte, Montana), the flooding underground mine workings that are hydrologically connected to the Berkeley Pit, and associated alluvial and bedrock aquifers.

3. Butte Open Pit Mining and Milling Area Operable Unit

This operable unit consists of the open pit mining and associated milling operations and waste piles formerly owned and operated by the Atlantic Richfield Company/Anaconda Minerals Company and now owned and operated by Montana Resources, Incorporated, pursuant to Montana Department of State Lands Permit Numbers 30, 30A, 41, and 108 in northeastern Butte, Montana.

4. Butte Non-Priority Soils Operable Unit

This operable unit consists of former mining, milling, and smelting facilities and associated waste rock, tailings, mill wastes, and contaminated soils in unpopulated areas of Silver Bow County, Montana. The boundaries of this operable unit are not defined; however, they are preliminarily recognized as areas within the Silver Bow Creek Superfund site which are outside the Silver Bow Creek floodplain, the Priority Soils operable unit boundaries, and the Butte Open Pit Mining and Milling Area operable unit boundaries.

EPA has evaluated information in connection with the investigation of the site concerning persons who may be associated with it. Based on this evidence, EPA believes that the Burlington Northern Railroad Company is a potentially responsible party (PRP) with respect to the Silver Bow Creek/Butte Area Superfund site. Potentially responsible parties (PRPs) under CERCLA include current and former owners and operators of the site as well as persons who arranged for disposal of hazardous substances found at the site, or persons who accepted hazardous substances for transport to the site. Specifically, EPA has reason to believe that the Montana Western Railway Company is a past owner/operator of railroad properties in the Butte Priority Soils operable unit. According to the Montana Western Railway Company, your company is also a present owner (Enclosure 1). By this letter, EPA notifies the corporation that you represent of potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the site.

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the site. These past response actions include, but are not limited to, preliminary site investigation, hazardous ranking system scoring, potentially responsible parties search, forward planning activities, emergency removal actions, and community relations activities. EPA may expend additional funds for response activities at the site under the authority of CERCLA and other laws.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

You will receive an additional notice from EPA in the near future. The notice will inform you that EPA is using the CERCLA Section 122(e) special notice procedures to formally negotiate terms of an administrative order on consent pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. Sections 9604 and 9622 to conduct or finance site response activities related to the Remedial Investigation/Feasibility Studies associated with the previously listed operable units.

Under Section 122(e), EPA has the discretionary authority to use the special notice procedures if EPA determines that such procedures would facilitate an agreement between EPA and the PRP's and would expedite RI/FS actions at the site. Use of the special notice procedures triggers a moratorium on certain EPA activities at the site. The purpose of the moratorium is to provide a period of time when PRP's and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the site.

The moratorium for the RI/FS lasts for up to 90 days after the notice is issued. If a good faith offer is submitted by the PRPs within 60 days, another 30 days are automatically provided for completion of negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the negotiation moratorium under Section 122(e)(4) of CERCLA. EPA is then authorized to commence such RI/FS actions as it deems appropriate. In the absence of an agreement with the parties to perform or finance the investigative activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of site expenditures or pursue unlimited enforcement action against the parties under Section 106 of CERCLA to compel performance of the activities.

The Silver Bow Creek/Butte Area site is very large and complex. There are a number of potentially responsible parties for each operable unit. These potentially responsible parties include: the past and present owners and operators of mining, milling, and smelting surface properties and associated contaminated surface industrial properties in Butte, Montana; present owners of underground mining claims associated with the flooding underground mine system; past and present owners and operators of railroad properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants; and present owners of other properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants.

The following parties have been identified as PRP's for the four previously listed operable units.

Butte Priority Soils Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. New Butte Mining, Inc.
8. Mr. Dennis R. Washington
9. Montana Resources, Inc.
10. Montana Western Railway Company, Inc.
11. Universal Royal Apex Limited
12. Union Pacific Railroad Company
13. State of Montana (Department of Commerce)
14. Butte/Silver Bow City and County Government
15. City of Walkerville, Montana
16. Atlantic Richfield Company
17. RARUS Railroad

18. Butte Historic Parks Railroad
19. Burlington Northern Railroad Company

Butte Mine Flooding Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. Yankee Mining Company
8. Eureka Mining Company
9. Black Rock Mining Company
10. New Butte Mining, Inc.
11. Mr. Dennis R. Washington
12. Montana Resources, Inc.
13. Atlantic Richfield Company

Butte Open Pit Mining and Milling Area Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Mountain Con Mining Corporation
4. Yankee Mining Company
5. Eureka Mining Company
6. Black Rock Mining Company
7. East Ridge Mining Company
8. New Butte Mining, Inc.
9. Mr. Dennis R. Washington
10. Montana Resources, Inc.
11. Atlantic Richfield Company

Butte Non-Priority Soils Operable Unit

The present ownership and mineral rights associated with this operable unit have not been fully researched. The Atlantic Richfield Company is a PRP and when the Operable Unit Specific Work Plan is developed for this Operable Unit at a future date, a complete description of present ownership and associated responsible parties will be available.

EPA would like to encourage negotiations among the PRP's and with EPA. If several PRP's are interested in conducting the RI/FS activities, it will be necessary to organize into a single representative body. To encourage this, EPA has enclosed a list of names and addresses of other PRP's who are also receiving this letter (Enclosure 2). Some PRP's have found it to be in their interest to participate in developing the RI/FS, because the RI/FS reports are key decision-making documents which determine

the ultimate remedy for cleaning up the site. Participation in the RI/FS would ensure that the PRP has a voice in the EPA decision-making process.

EPA in conjunction with the State of Montana conducted an introductory and organizational briefing of all interested PRP's on the upcoming RI/FS negotiations. The meeting was held on February 28, 1989 at the following location:

McDuff's Pancake and Steakhouse
Conference Room
2700 Harrison Avenue
Butte, Montana
9:00 am - 5:00 pm

Issues discussed at this meeting included the proposed administrative order on consent, operable units and workplans associated with them, a timetable of proposed activities, PRP's roles in conducting and implementing the workplans, and EPA's and the State of Montana's role in future site activities. A copy of the handout materials from the meeting is enclosed (Enclosure 3). We urge you to contact the other PRP's as soon as possible and join the effort to organize a PRP steering committee for the negotiations with EPA. Please send EPA a notice of your intent to cooperate with EPA and the other PRP's within one week of receipt of this letter.

REQUEST FOR INFORMATION

EPA is seeking to obtain information from you concerning the nature and extent of hazardous substances associated with the railroad properties in Butte formerly and presently owned or operated by your company and the ability of Burlington Northern Railroad Company to pay for or perform a cleanup at the site. This information request is made pursuant to section 104(e) of CERCLA as amended, 42 U.S.C. 9604(e). Section 104(e) provides EPA with the authority to collect information and documentation necessary to respond to a release or threatened release of hazardous substances, or otherwise enforce the provisions of CERCLA. Enclosed is a list of questions and requests related to areas and properties which are the subject of the evaluation. EPA hereby formally requires you to submit to it all information and documentation requested in the list of questions and requests enclosed with this letter as Enclosure 4.

Your response must be based on a review of all information available, including documents, interviews, and your best recollection of the events. If you identify or provide copies of records in response to the request, please describe the author of the records and the current location of the records, as well as the current custodian of the records. If in answering any of the above questions information was obtained through employee

interviews, so indicate in your letter and provide the names of the employees interviewed.

Pursuant to section 103(d) of CERCLA, as amended, 42 U.S.C. § 9603(d), it is unlawful for any person to knowingly destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any record which is or may be responsive to the request. You are also requested to supplement all responses if and when new documents or information become available.

Your response to this request must be submitted in person or by certified mail, return receipt requested, within 21 calendar days of your receipt of this letter, to:

U.S. Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405
ATTENTION: Rex Callaway, 8RC

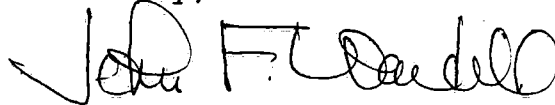
Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to EPA is complete and contains all documents and information responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 5.

Any failure to comply with this request within the time specified may result in an enforcement action against you including the assessment of significant penalties.

EPA regulations concerning confidentiality of business information are set forth in Part 2, Subpart B, of Title 40 of the Code of Federal Regulations. In addition, section 104(e)(7) of CERCLA, as amended, 42 U.S.C. § 9607(e)(7), contains additional proscriptions concerning claims of business confidentiality in connection with this request. When a portion of the information submitted is entitled to confidential treatment, a confidentiality claim may be asserted in accordance with 40 C.F.R. section 2.203(b) and section 104(e)(7) of CERCLA. If EPA determines that the information so designated meets the criteria set forth in the above-referenced sections, the information will be disclosed only to the extent and by means of the procedures specified in 40 C.F.R. Part 2, Subpart B. EPA will construe the failure to furnish a confidentiality claim with your response to this letter as a waiver of that claim, and information may be made available to the public by EPA without further notice.

Because of the serious nature of this request, please give it your immediate attention. Comments or questions on this matter can be addressed to Sara Weinstock, (406) 449-5414 (technical) or Rex Callaway, (303) 294-7190 (legal).

Sincerely,



John F. Wardell, Director
Montana Office

Enclosures

cc: Jeff Desautels, ARCO
Robert L. Duprey, 8HWM
Dr. Sidney C. Pratt, MDHES
Tom Eggert, MDHES
Russ Forba, 8MO
Rex Callaway, 8RC
Dennis Washington, MRI
J. W. Greene, MT Western Railway Co.
Paul T. Keller, Universal Royal Apex Limited
Nancy Roberts, Union Pacific Railroad Company
John Craig, MT Dept. of Commerce
Bill McCarthy, RARUS Railroad
John Podobnic, Butte Historic Parks Railroad
Don Peoples, Butte/Silver Bow Government
Bernie Harrington, Walkerville, MT
John Thorson, New Butte Mining, Inc.
Frank Crowley, Montana Mining Properties, Inc.

Sara

P-480 423 635

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

Burlington Station R. R. P.O.

U.S.G.P.O. 153-506

Sent to	
<i>Arthur Tagel</i>	
Street and No.	
<i>3900 Continental Plaza</i>	
P.O., State and ZIP Code	
<i>777 Main St</i>	
Postage	
<i>Westworth, Tx 76102</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

ER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this
from being returned to you. The return receipt fee will provide you the name of the person
ed to and the date of delivery. For additional fees the following services are available. Consult
master for fees and check box(es) for additional service(s) requested.

☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

Article Addressed to:

Arthur Fogel
Burlington Hardware Co
3800 Connecticut Plaza
777 Main Street
Andover, Mass 01810

4. Article Number

0480423-635

Type of Service:

☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or
agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (ONLY if
requested and fee paid)

CONCURRENCE COPY

Ref: 8MO

GENERAL NOTICE LETTER AND INFORMATION REQUEST
URGENT LEGAL MATTER - - PROMPT REPLY NECESSARY
CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 4, 1989

Mr. Arthur Zaegel
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

RE: General Notice Letter and Information Request Concerning
Silver Bow Creek/Butte Area Superfund Site
Silver Bow County, Montana

Dear Mr. Zaegel:

NOTICE OF POTENTIAL LIABILITY

This letter notifies the Burlington Northern Railroad Company of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9607(a), as amended, that you may incur or may have incurred with respect to the above referenced site. This letter also notifies you of potential response activities at the site, which you may be asked to perform or finance at a later date. In addition, this letter includes a request for information pursuant to Section 104(e) of CERCLA 42 U.S.C. Section 9604(e).

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Silver Bow Creek/Butte Area Superfund site. EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the site. Unless EPA reaches an agreement under which a potentially liable party or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA 42 U.S.C. Section 9604, and/or require the conduct of the Remedial Investigation/Feasibility Study (RI/FS) through the issuance of a unilateral administrative order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), Section 7003 of the Resource

Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6973, as amended, and other laws, potentially liable parties may be obligated to implement response actions deemed necessary by EPA to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government on responding to any release or threatened release at the site. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design/Remedial Action (RD/RA), and other investigation, planning, response, and enforcement activities.

EPA has determined that release of hazardous substances (as defined by Section 101(14) of CERCLA) has occurred or may be occurring at properties owned by the companies that you represent and that there is a substantial threat of further releases of hazardous substances (as defined by Section 101(14) of CERCLA) from these properties. At the present time, arsenic, cadmium, lead, copper and zinc from these properties are contaminating and/or threatening to contaminate soils, surface water, groundwater, and ambient air in and around the Silver Bow Creek drainage, including Butte and Walkerville, Montana, downstream reaches of Silver Bow Creek through its confluence with Warm Springs Creek, and portions of the Clark Fork River. Residents of Butte, Montana, and environs may be exposed to elevated concentrations of hazardous substances in soils and solid wastes and to contaminated surface and groundwater. These elevated concentrations may present an imminent and substantial endangerment to health, welfare, and the environment.

SITE RESPONSE ACTIVITIES

At present, EPA is planning to conduct the following activities at the site:

1. Remedial Investigations (RI) to identify the local characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the site.
2. Feasibility Studies (FS) to evaluate alternative remedial actions to remove or contain hazardous substances, pollutants, and contaminants at the site.

EPA, in consultation with the State of Montana, has divided the Butte Area of the Silver Bow Creek/Butte Area Superfund site into four operable units for purposes of conducting RI/FS's. One or more separate RI/FS's shall be conducted for each of these operable units. The four operable units are as follows:

1. Butte Priority Soils Operable Unit
Phase 1 Health
Phase 2 General

This operable unit consists of former and active mining, milling, smelting, and related facilities and associated waste rock, tailings mill wastes, and contaminated soils in populated areas of Butte and Walkerville, Montana, outside the Silver Bow Creek 100 year floodplain. The operable unit is broken into two phases for remedial investigation purposes; phase 1 (health) and phase 2 (general). Phase 1 consists of evaluation of 38 residential areas and mining waste deposits which are in close proximity to these residential areas. Phase 2 consists of evaluation of areas within or in close proximity to the cities of Butte and Walkerville, including the previously mentioned 38 residential areas, which are impacted by mining and milling related wastes. This area generally consists of the area from the Missoula Gulch drainage eastward to the Berkeley Pit and south to the Silver Bow Creek floodplain, and the Clark Tailings/Timber Butte/Grove Gulch area. Phase 2 emphasizes the environmental impact of mining wastes on this area but will also address present and future health impacts and implications of future land uses including residential development.

2. Butte Mine Flooding Operable Unit

This operable unit consists of the flooding Berkeley Pit (a former open pit copper/molybdenum mine located in northeastern Butte, Montana), the flooding underground mine workings that are hydrologically connected to the Berkeley Pit, and associated alluvial and bedrock aquifers.

3. Butte Open Pit Mining and Milling Area Operable Unit

This operable unit consists of the open pit mining and associated milling operations and waste piles formerly owned and operated by the Atlantic Richfield Company/Anaconda Minerals Company and now owned and operated by Montana Resources, Incorporated, pursuant to Montana Department of State Lands Permit Numbers 30, 30A, 41, and 108 in northeastern Butte, Montana.

4. Butte Non-Priority Soils Operable Unit

This operable unit consists of former mining, milling, and smelting facilities and associated waste rock, tailings, mill wastes, and contaminated soils in unpopulated areas of Silver Bow County, Montana. The boundaries of this operable unit are not defined; however, they are preliminarily recognized as areas within the Silver Bow Creek Superfund site which are outside the Silver Bow Creek floodplain, the Priority Soils operable unit boundaries, and the Butte Open Pit Mining and Milling Area operable unit boundaries.

EPA has evaluated information in connection with the investigation of the site concerning persons who may be associated with it. Based on this evidence, EPA believes that the Burlington Northern Railroad Company is a potentially responsible party (PRP) with respect to the Silver Bow Creek/Butte Area Superfund site. Potentially responsible parties (PRPs) under CERCLA include current and former owners and operators of the site as well as persons who arranged for disposal of hazardous substances found at the site, or persons who accepted hazardous substances for transport to the site. Specifically, EPA has reason to believe that the Montana Western Railway Company is a past owner/operator of railroad properties in the Butte Priority Soils operable unit. According to the Montana Western Railway Company, your company is also a present owner (Enclosure 1). By this letter, EPA notifies the corporation that you represent of potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the site.

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the site. These past response actions include, but are not limited to, preliminary site investigation, hazardous ranking system scoring, potentially responsible parties search, forward planning activities, emergency removal actions, and community relations activities. EPA may expend additional funds for response activities at the site under the authority of CERCLA and other laws.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

You will receive an additional notice from EPA in the near future. The notice will inform you that EPA is using the CERCLA Section 122(e) special notice procedures to formally negotiate terms of an administrative order on consent pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. Sections 9604 and 9622 to conduct or finance site response activities related to the Remedial Investigation/Feasibility Studies associated with the previously listed operable units.

Under Section 122(e), EPA has the discretionary authority to use the special notice procedures if EPA determines that such procedures would facilitate an agreement between EPA and the PRP's and would expedite RI/FS actions at the site. Use of the special notice procedures triggers a moratorium on certain EPA activities at the site. The purpose of the moratorium is to provide a period of time when PRP's and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the site.

The moratorium for the RI/FS lasts for up to 90 days after the notice is issued. If a good faith offer is submitted by the PRPs within 60 days, another 30 days are automatically provided for completion of negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the negotiation moratorium under Section 122(e)(4) of CERCLA. EPA is then authorized to commence such RI/FS actions as it deems appropriate. In the absence of an agreement with the parties to perform or finance the investigative activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of site expenditures or pursue unlimited enforcement action against the parties under Section 106 of CERCLA to compel performance of the activities.

The Silver Bow Creek/Butte Area site is very large and complex. There are a number of potentially responsible parties for each operable unit. These potentially responsible parties include: the past and present owners and operators of mining, milling, and smelting surface properties and associated contaminated surface industrial properties in Butte, Montana; present owners of underground mining claims associated with the flooding underground mine system; past and present owners and operators of railroad properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants; and present owners of other properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants.

The following parties have been identified as PRP's for the four previously listed operable units.

Butte Priority Soils Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. New Butte Mining, Inc.
8. Mr. Dennis R. Washington
9. Montana Resources, Inc.
10. Montana Western Railway Company, Inc.
11. Universal Royal Apex Limited
12. Union Pacific Railroad Company
13. State of Montana (Department of Commerce)
14. Butte/Silver Bow City and County Government
15. City of Walkerville, Montana
16. Atlantic Richfield Company
17. RARUS Railroad

18. Butte Historic Parks Railroad
19. Burlington Northern Railroad Company

Butte Mine Flooding Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. Yankee Mining Company
8. Eureka Mining Company
9. Black Rock Mining Company
10. New Butte Mining, Inc.
11. Mr. Dennis R. Washington
12. Montana Resources, Inc.
13. Atlantic Richfield Company

Butte Open Pit Mining and Milling Area Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Mountain Con Mining Corporation
4. Yankee Mining Company
5. Eureka Mining Company
6. Black Rock Mining Company
7. East Ridge Mining Company
8. New Butte Mining, Inc.
9. Mr. Dennis R. Washington
10. Montana Resources, Inc.
11. Atlantic Richfield Company

Butte Non-Priority Soils Operable Unit

The present ownership and mineral rights associated with this operable unit have not been fully researched. The Atlantic Richfield Company is a PRP and when the Operable Unit Specific Work Plan is developed for this Operable Unit at a future date, a complete description of present ownership and associated responsible parties will be available.

EPA would like to encourage negotiations among the PRP's and with EPA. If several PRP's are interested in conducting the RI/FS activities, it will be necessary to organize into a single representative body. To encourage this, EPA has enclosed a list of names and addresses of other PRP's who are also receiving this letter (Enclosure 2). Some PRP's have found it to be in their interest to participate in developing the RI/FS, because the RI/FS reports are key decision-making documents which determine

the ultimate remedy for cleaning up the site. Participation in the RI/FS would ensure that the PRP has a voice in the EPA decision-making process.

EPA in conjunction with the State of Montana conducted an introductory and organizational briefing of all interested PRP's on the upcoming RI/FS negotiations. The meeting was held on February 28, 1989 at the following location:

McDuff's Pancake and Steakhouse
Conference Room
2700 Harrison Avenue
Butte, Montana
9:00 am - 5:00 pm

Issues discussed at this meeting included the proposed administrative order on consent, operable units and workplans associated with them, a timetable of proposed activities, PRP's roles in conducting and implementing the workplans, and EPA's and the State of Montana's role in future site activities. A copy of the handout materials from the meeting is enclosed (Enclosure 3). We urge you to contact the other PRP's as soon as possible and join the effort to organize a PRP steering committee for the negotiations with EPA. Please send EPA a notice of your intent to cooperate with EPA and the other PRP's within one week of receipt of this letter.

REQUEST FOR INFORMATION

EPA is seeking to obtain information from you concerning the nature and extent of hazardous substances associated with the railroad properties in Butte formerly and presently owned or operated by your company and the ability of Burlington Northern Railroad Company to pay for or perform a cleanup at the site. This information request is made pursuant to section 104(e) of CERCLA as amended, 42 U.S.C. 9604(e). Section 104(e) provides EPA with the authority to collect information and documentation necessary to respond to a release or threatened release of hazardous substances, or otherwise enforce the provisions of CERCLA. Enclosed is a list of questions and requests related to areas and properties which are the subject of the evaluation. EPA hereby formally requires you to submit to it all information and documentation requested in the list of questions and requests enclosed with this letter as Enclosure 4.

Your response must be based on a review of all information available, including documents, interviews, and your best recollection of the events. If you identify or provide copies of records in response to the request, please describe the author of the records and the current location of the records, as well as the current custodian of the records. If in answering any of the above questions information was obtained through employee

interviews, so indicate in your letter and provide the names of the employees interviewed.

Pursuant to section 103(d) of CERCLA, as amended, 42 U.S.C. § 9603(d), it is unlawful for any person to knowingly destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any record which is or may be responsive to the request. You are also requested to supplement all responses if and when new documents or information become available.

Your response to this request must be submitted in person or by certified mail, return receipt requested, within 21 calendar days of your receipt of this letter, to:

U.S. Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405
ATTENTION: Rex Callaway, 8RC

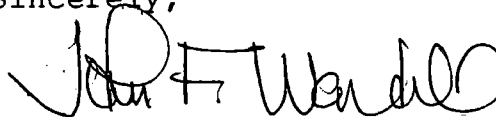
Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to EPA is complete and contains all documents and information responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 5.

Any failure to comply with this request within the time specified may result in an enforcement action against you including the assessment of significant penalties.

EPA regulations concerning confidentiality of business information are set forth in Part 2, Subpart B, of Title 40 of the Code of Federal Regulations. In addition, section 104(e)(7) of CERCLA, as amended, 42 U.S.C. § 9607(e)(7), contains additional proscriptions concerning claims of business confidentiality in connection with this request. When a portion of the information submitted is entitled to confidential treatment, a confidentiality claim may be asserted in accordance with 40 C.F.R. section 2.203(b) and section 104(e)(7) of CERCLA. If EPA determines that the information so designated meets the criteria set forth in the above-referenced sections, the information will be disclosed only to the extent and by means of the procedures specified in 40 C.F.R. Part 2, Subpart B. EPA will construe the failure to furnish a confidentiality claim with your response to this letter as a waiver of that claim, and information may be made available to the public by EPA without further notice.

Because of the serious nature of this request, please give it your immediate attention. Comments or questions on this matter can be addressed to Sara Weinstock, (406) 449-5414 (technical) or Rex Callaway, (303) 294-7190 (legal).

Sincerely,



John F. Wardell, Director
Montana Office

Enclosures

cc: Jeff Desautels, ARCO ✓
Robert L. Duprey, 8HWM ✓
✓ Dr. Sidney C. Pratt, MDHES ✓
✓ Tom Eggert, MDHES ✓
Russ Forba, 8MO ✓
Rex Callaway, 8RC ✓
Dennis Washington, MRI ✓
J. W. Greene, MT Western Railway Co. ✓
Paul T. Keller, Universal Royal Apex Limited ✓
Nancy Roberts, Union Pacific Railroad Company ✓
John Craig, MT Dept. of Commerce ✓
Bill McCarthy, RARUS Railroad ✓
John Podobnic, Butte Historic Parks Railroad ✓
Don Peoples, Butte/Silver Bow Government ✓
Bernie Harrington, Walkerville, MT ✓
John Thorson, New Butte Mining, Inc. ✓
Frank Crowley, Montana Mining Properties, Inc. ✓

(19)

FCD:February 17, 1989:Sara:ct:Specialn.3

ENCLOSURE 2

POTENTIALLY RESPONSIBLE PARTIES
SILVER BOW CREEK/BUTTE AREA
SUPERFUND SITE
BUTTE, MONTANA, AREA

1. Butte Priority Soils Operable Unit

- a. Atlantic Richfield Company
555 Seventeenth Street
Denver, Colorado 80202
Attn: H.L. Bilhartz
Vice President
- b. Central Butte Mining Corporation
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- c. North Butte Mining Company
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- d. Tzarina-Travona Mining Corporation
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- e. Mountain Con Mining Corporation
P. O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- f. West Butte Metals, Inc.
P. O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- g. Bluebird Mining Company
P. O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others

- h. New Butte Mining, Inc.
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- i. Mr. Dennis Washington
(in his individual capacity)
Datsopoulos, MacDonald & Lind
c/o Becky Sommerville
201 W. Main
Missoula, Montana 59802
- j. Montana Resources, Inc.
600 Shields Avenue
Butte, Montana 59701
Attn: Mr. Dennis Washington
President
- k. Montana Western Railway Company, Inc.
701 1/2 Railroad Street
Butte, Montana 59701
Attn: J. W. Greene
Registered Agent
- l. Universal Royal Apex Limited
38 South Last Chance Gulch
Helena, Montana 59626
Attn: Paul T. Keller
Registered Agent
- m. Union Pacific Railroad Company/
Oregon Shortline Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
Attn: J. R. Davis
Vice President of Operations
- n. Montana Department of Commerce
1424 9th Avenue
Helena, Montana 59620
Attn: John Craig
- o. RARUS Railroad
300 W. Commercial Ave
Anaconda, Montana 59711
Attn: Bill McCarthy
- p. Butte Historic Parks Railroad
P. O. Box 3767
Butte, Montana 59701
Attn: John Podobnic

- q. Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102
Attn: Arthur Zaegel
- r. Butte/Silver Bow Government
155 W. Quartz
Butte, Montana 59701
Attn: Don Peoples
Chief Executive
- s. City of Walkerville
P. O. Box 257
Walkerville, Montana 59701
Attn: Bernie Harrington
Mayor

2. Butte Mine Flooding Operable Unit

- a. Atlantic Richfield Company
555 Seventeenth Street
Denver, Colorado 80202
Attn: H.L. Bilhartz
Vice President
- b. Central Butte Mining Corporation
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- c. North Butte Mining Company
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- d. Tzarina-Travona Mining Corporation
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- e. Mountain Con Mining Corporation
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others

- f. West Butte Metals, Inc.
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- g. Bluebird Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- h. Yankee Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- i. Eureka Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- j. Black Rock Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- k. New Butte Mining, Inc.
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- l. Mr. Dennis Washington
(in his individual capacity)
Datsopoulos, MacDonald & Lind
c/o Becky Sommerville
201 W. Main
Missoula, Montana 59802
- m. Montana Resources, Inc.
600 Shields Avenue
Butte, Montana 59701
Attn: Mr. Dennis Washington
President

3. Butte Non-Priority Soils Operable Unit

- a. Atlantic Richfield Company
555 Seventeenth Street
Denver, Colorado 80202
Attn: H.L. Bilhartz
Vice President

4. Butte Open Pit Mining and Milling Area Operable Unit

- a. Atlantic Richfield Company
555 Seventeenth Street
Denver, Colorado 80202
Attn: H.L. Bilhartz
Vice President
- b. Central Butte Mining Corporation
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- c. North Butte Mining Company
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
New Butte Mining, Inc.
- d. Mountain Con Mining Corporation
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- e. Yankee Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- f. Eureka Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- g. Black Rock Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others

- h. East Ridge Mining Company
P.O. Box 605
Butte, Montana 59703
Attn: Mr. Frank A. Crowley
Mountain Con Mining Company and Others
- i. New Butte Mining, Inc.
P.O. Box 188
Butte, Montana 59703
Attn: Mr. Tom M. Malloy
- j. Mr. Dennis Washington
(in his individual capacity)
Datsopoulos, MacDonald & Lind
c/o Becky Sommerville
201 W. Main
Missoula, Montana 59802
- k. Montana Resources, Inc.
600 Shields Avenue
Butte, Montana 59701
Attn: Mr. Dennis Washington
President

ENCLOSURE 4

REQUEST FOR INFORMATION SILVER BOW CREEK/BUTTE AREA NPL SITE

INSTRUCTIONS FOR COMPLETING YOUR RESPONSE

1. Any documents referred to in or relevant to any answer or relied on or used by you to answer any question in the Request for Information must be copied and submitted to EPA with your response. All documents submitted by you must contain a notation indicating the question to which they are responsive.
2. If any question or request cannot be answered in full, answer to the greatest extent possible and use estimates if specific information is not available. If your responses are qualified in any manner, please explain.
3. This request applies to documents and information within your possession or control, including without limitation all documents and information within the possession or control of any agent, attorney, consultant, employee, investigator, or third person.

DEFINITIONS

1. The term "you" or "your" refers to the person, company, or entity to whom this letter is directed and includes any officer, employee, agent, servant, attorney, consultant, subsidiary, affiliate, division, or subgroup or any other entity acting on your behalf.
2. The term "document" refers to any original, copy, or draft of any handwritten, typewritten, printed, graphic, or electronically recorded information and shall include without limitation correspondence, notes, memoranda, reports, manuals, inter-office communications, records, charts, photographs, bills, travel summaries or logs, diaries or itineraries, transcripts, statements, tape recordings, computer printouts or software, contracts, insurance policies, shipping documents, bills of lading, manifests, invoices, weight tickets, annual reports, analytical worksheets, or other tangible records of any nature or kind. Any document that contains marginal notes shall be considered a separate document.
3. The term "person" refers to any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government entity, State,

municipality, commission, political subdivision of a State, or any interstate body.

QUESTIONS

1. Please state the full name, mailing address, and telephone number of any company, individual, or business entity under which the Burlington Northern Railroad Company held title, leased property or claims, conducted business, or operated at, near, or in connection with, the railroad properties formerly or presently owned by Burlington Northern Railroad Company located in the Butte Priority Soils operable unit for the Butte RI/FS project as identified in the map of the railroad properties of concern to EPA in the Butte area (Enclosure 6).
2. Describe any interest, either complete or partial ownership, any leasehold interest, or any other property interest, you or any organization named above currently have, or have had, in the areas described in Question 1 above. Clearly identify the date you held any interest in the property, the date of transfer or termination of any interest, and the party to whom any interest was transferred. Provide any documentation of any interest in the properties, any transfer of such interest, and termination of such interest. Please include copies of any maps of such interests in your possession.
3. Describe any business or operational activities conducted by you at or near the areas identified in Question 1. Provide any documentation you have describing these activities.
4. Describe any studies or sampling and analysis conducted by your company to evaluate actual or potential releases of hazardous substances from the properties identified in Question 1. Identify such documents by title, date, and author and briefly summarize. Describe any measures undertaken by your company to control or minimize the release of hazardous substances from these properties.
5. List the names and addresses of all current directors and officers of your organization or business, if that organization is a corporation. Provide the names and addresses of any partners or individuals in substantial control of your organization or business if it is not a corporation. Provide the names and addresses of any person employed by or associated with your organization or business who is or has been involved in a substantial manner with any activities or decisions regarding the Question 1 properties.
6. State the name and title of the person completing this request.

7. State the name and title of the person whom EPA should contact for further information regarding this activity, including a mailing address and telephone number.

8. Describe any additional sources of information not within your custody or control which may be relevant to this inquiry, including the names and addresses of individuals or the location of other documents.

9. State the name and address of any predecessor corporation to the Burlington Northern Railroad Company and whether the predecessor corporation is still in existence.

10. Please state the manner in which the Burlington Northern Railroad Company is legally organized and provide the state(s) of incorporation, including in your answer the names and addresses of the corporate officers and shareholders. Please list the amount of stock held directly or indirectly by each shareholder, all partners and/or joint venturers of Burlington Northern Railroad Company, and all other persons or entities having any control or direction of Burlington Northern Railroad Company assets. Please list all entities with which Burlington Northern Railroad Company has merged or consolidated or from whom it has acquired assets. Please list any and all of Burlington Northern Railroad Company's predecessors and successors in interest, shareholders, and any entities whose directorates interlock to any degree with Burlington Northern Railroad Company.

11. Please identify any parent corporation or subsidiaries of Burlington Northern Railroad Company and provide any information on such parents or subsidiaries which is in the possession of Burlington Northern Railroad Company or its officers or employees and which falls within the categories of information requested of Burlington Northern Railroad Company in Question 10 above.

12. List each insurance company or other person that provided casualty or pollution liability insurance coverage including but not limited to any Comprehensive General Liability coverage, Environmental Impairment coverage, Insurance Services Office coverage, Umbrella coverage, or any other indemnification or defense agreement that provides to you or any other person or entity identified in response to Questions 10 and 11 and a right of indemnification or defense in any action involving hazardous substances. Submit copies of all insurance policies or agreements identified. Include a description of the name and address of the insurer and insured, the amount of coverage, commencement and expiration dates, whether or not the policy contains a "pollution exclusion," and whether the policy covers sudden, nonsudden, or both types of accidents for each policy.

13. Provide the following financial information for Burlington Northern Railroad Company or its successors or predecessors in

interest for the years 1980 to the present:

- a. Income tax returns sent to the Federal Internal Revenue Service and the State of Montana Department of Revenue.
- b. Financial statements including but not limited to those filed with the Federal Internal Revenue Service, the Montana Department of Revenue, and the Securities and Exchange Commission.
- c. Balance sheets.
- d. Income statements.
- e. Profit and loss statements.
- f. Statements/documents reflecting changes in financial position.
- g. Retained earnings statements.
- h. Loan applications.
- i. Financing agreements.
- j. Security agreements.

14. Describe any release, waivers, or limitations of liability for pollutants or hazardous substances, wastes, or products given or received during the purchase, sale, or lease of any or all of the properties presently or formerly owned or operated by Burlington Northern Railroad Company in the Question 1 areas.

As stated, the answers to these questions and requests must be provided within 21 days of receipt of this letter.

ENCLOSURE 5

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by _____
(Company Name)

to respond to the Environmental Protection Agency's ("EPA's") request for information concerning the Burlington Northern Railroad Company properties in Butte, Montana.

2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.

3. I hereby certify that the attached response to EPA's request is complete and contains all information and documents responsive to the request.

(SEAL)

(Signature) (Name, Title)

Subscribed and sworn to me
this _____ day of _____,
1989.

Notary Public

My Commission Expires _____
My address is _____
